

REMARKS

INTRODUCTION:

In accordance with the foregoing, claim 23 has been added. No new matter is being presented, and approval and entry of the new claim is respectfully requested. Claims 1-23 are pending and under consideration.

I. Provisional Election of Claims Pursuant to 37 CFR §1.142

Applicants provisionally elect Invention I, which the Examiner asserts is drawn to claims 1-11, 21, and 22 drawn to a phosphor used in a fluorescent device in response to the preliminary restriction requirement set forth in the Office Action. However, in view of the added claim 23, it is respectfully submitted that claims 12-20 and 23 are within elected Invention I. As such, it is respectfully submitted that the Applicants provisionally elect Invention I, and that the restriction requirement is deemed moot.

II. Applicants Traverse the Requirement

As an initial point of clarification, it is respectfully submitted that claims 1-11 of Invention I and claims 12-20 of Invention II are drawn to a phosphor, and are not limited to the phosphor being in a fluorescent display device or being otherwise limited to a particular device.

Additionally, assuming arguendo that the Examiner believes claims 12-20 and 23 remain in Invention II, it is believed that claims of Invention II are so closely related to elected claims of Invention I that they should remain in the same application. The elected claims are directed to a phosphor as recited in claim 1, where the phosphor is used in the fluorescent display device of claim 21. In contrast, the non-elected claim 12 is drawn to a phosphor, where the phosphor is used in a fluorescent display device of claim 23. There have been no references cited to show any necessity for requiring restriction and, in fact, it is believed that the Examiner's normal search for the claims of Invention I would encompass both technologies as defined by the Examiner. As such, even assuming arguendo that the Examiner's classifications of the phosphor and the fluorescent display device using the phosphor are correct, it is believed that classification is not conclusive on the question of restriction for the instant application. It is believed, moreover, that evaluation of both sets of claims would not provide an undue burden upon the Examiner at this time in comparison with the additional expense and delay to Applicants in having to protect the additional subject matter recited by the Invention II claims by filing a divisional application.

MPEP 803 sets forth the criteria for restriction between patentably distinct inventions. (A) indicates that the inventions must be independent (see MPEP §802.01, §806.04, §808.01) or distinct as claimed (see MPEP §806.05-806.05(i)); and (B) indicates that there must be a serious burden on the Examiner if restriction is required (see MPEP §803.02, §806.04(a)- §806.04(i), §808.01(a) and §808.02). It is respectfully believed Examiner has not set forth sufficient evidence as to why there would be a serious burden if restriction is required, and why such a burden is greater than the burden, delay, and expense visited on the Applicants in having to obtain coverage for the Invention II claims through the use of a divisional application.

Lastly, even if the Examiner considers claims 12-20 and 23 to be a separate invention from the invention of claims 1-11, 21 and 22, the Applicants respectfully request the Examiner to consider claims of Inventions I and II together.

III. Conclusion

Upon review of references involved in this field of technology, and when all of the other various facts are taken into consideration, it is believed that upon reconsideration of the Examiner's initial restriction requirement, all of the pending claims should be examined in the subject application. In view of the foregoing amendments, arguments and remarks, all claims are deemed to be allowable and this application is believed to be in condition for allowance.


If any further fees are required in connection with the filing of this Amendment and Response, please charge the same to our deposit account number 19-3935.

Should any questions remain unresolved, the Examiner is requested to telephone Applicants' attorney.

Respectfully submitted,

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